

### **REMARKS**

Claims 15-28 are pending.

Claims 15-28 are rejected.

Claim 28 has been cancelled without prejudice or disclaimer. Applicants do not concede in this patent application that claim 28 as originally filed is unpatentable over the art cited by the Examiner. Thus, Applicants respectfully reserve the right to pursue claim 28 as originally filed and other claims in one or more continuations and/or divisional patent applications

Claim 29 has been added. No new matter has been entered in view of the addition of new claim 29.

Applicants submit that the claim rejections should be withdrawn for the reasons discussed below.

### **ARGUMENTS**

#### ***35 U.S.C. § 101) Rejection of Claim 28***

The Examiner rejected claim 28 as being directed to non-statutory subject matter because of the recitation of a program. Applicants have cancelled claim 28. Accordingly, Applicants submit the rejection of claim 28 should be withdrawn.

#### ***35 U.S.C. § 103(a) Rejection of Claims 15,16 and 20-28***

The Examiner rejected Claims 15, 16, and 20-28 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,020,883 to Herz et al. ("Herz") in view of U.S. Patent Application Publication No. 2002/0133817 to Markel et al. ("Markel"). Applicants disagree with this ground of rejection.

Claim 15

With respect to claim 15, the Office Action contends that Herz teaches an “acquisition device for obtaining files by accumulating points, designed for at least one user of at least one receiver of data of at least one communication network: as recited by claim 1. The basis for the Office Action’s contention is that Herz teaches “a system for scheduling the receipt of desired movies and program data from a network (abstract) discloses [sic] by Herz and represented in Figs. 4 and 5.” See Office Action, pages 2-3. A teaching of a system that schedules receipt of desired movies and program data from a network is **not** a teaching of an acquisition device that obtains files by **accumulating points**. Herz does not provide any mention of a point accumulation device. Accordingly, Herz does not teach an “acquisition device for obtaining files by accumulating points, designed for at least one user of at least one receiver of data of at least one communication network: as recited by claim 1.

The Office Action goes on to contend that Herz teaches “to acquire at least one of said files by downloading of said file via said communication network when the aggregate number of said points reaches a predetermined level associated with said file.” See Office Action, page 3. In particular, the Office Action explains that:

“... Herz discloses (col.3, lines 1-12; col.4, lines 20-31) that the receiver receives the audio/video programming data/file from the server based on the user preference. Herz further discloses (col.10, lines 5-10; col.23, line 65-col.24, line 10; col.28, lines 20-26; col.48, lines 12-16) that the agreement matrix, which matches available video programs with a user preference, is created and when the threshold for this matrix reaches above/below limit, based on the response from receiver, server sends desired programming data to receiver as represented in Figs. 1 and 2.” See Office Action, page 3.

Once again, Herz is not disclosing an accumulation of points or any other type of point management. The receiver in Herz receives data based on **a user preference, not an accumulation of points**. A user preference having to meet a threshold value is simply not the same concept as a user having to accumulate an aggregate number of points. Accordingly, Herz does not teach “to acquire at least one of said files by downloading of said file via said communication network when

the aggregate number of said points reaches a predetermined level associated with said file” as recited by claim 15.

Further, the Office Action also contends that Herz teaches “wherein said device comprises an automatic control module for ordering downloading via said network to a storage space accessible to said receiver, of portions of said file, designed to order the downloading of each of said portions when the number of points earned by said user reaches a fraction of said predetermined level which corresponds to said portion” as recited by claim 15. Specifically, the Office Action states that:

“... Herz discloses (col.27, lines 39-42; col.46, lines 10-30) that the user receives all the video programs list [sic] from the server based on the user preference provided to the user. Based on user's viewing history, server sends n programs to the user. When popularity or the threshold for a program falls below the limit, then the server sends new list of n programs based on the user's viewing history and their preferences.” See Office Action, pages 3-4.

Once again, the Office Action relies on the teaching of a “user preference” in Herz for the recitation of points. A **number of points earned by a user is different than a user preference**. Further, Herz does not teach that a portion of a file can be downloaded. Since a portion of a file being download is not taught by Herz, Herz cannot teach a fraction of the predetermined level corresponding to the portion. As discussed in the Office Action, Herz explains that an entire new list is provided when a program's popularity falls below a threshold. See Office Action, pages 3-4. Accordingly, Herz does not teach “wherein said device comprises an automatic control module for ordering downloading via said network to a storage space accessible to said receiver, of portions of said file, designed to order the downloading of each of said portions when the number of points earned by said user reaches a fraction of said predetermined level which corresponds to said portion” as recited by claim 15.

The Office Action admits that Herz does not provide a teaching for the “user being able to earn points by occurrences of at least one predefined operation accomplished by said user.” See Office Action, page 4. However, the Office Action contends that Markel provides such a teaching by stating that “... Markel discloses (¶0011 and ¶0014) that the viewers earn points by watching

program contents for advertisements that they pre-registered.” See Office Action, page 4. Markel explains that the points earned by a user are for merchandise. See Markel, para. [0011]. Markel provides no teaching in which the accumulation of points correspond to a downloading of files. On the contrary, Markel assumes that a program is already being viewed prior to the earning of points so that the user can potentially win merchandise associated with the viewed content. See Markel, para. [0011]. Therefore, Markel cannot teach that the earning of points has to occur before content can be viewed. Further, the combination of Herz and Markel at most provides a system in which a user can provide user preferences for programs to be viewed and then, after the content is being viewed, earn points to win merchandise associated with the viewed content. The combination does not teach that the earning of points allows the content to even be viewed. Therefore, Herz, Markel, and the combination of Herz and Markel do not teach the “user being able to earn points by occurrences of at least one predefined operation accomplished by said user” or “downloading of said file via said communication network when the aggregate number of said points reaches a predetermined level associated with said file”. Accordingly, Applicants submit that the rejection of claim 15 should be withdrawn.

#### Claims 16 and 20-28

As claims 16, 20-25, and 27 depend from independent claim 15, Applicants submit that these claims are allowable for the reasons discussed with respect to independent claim 15. Therefore, Applicant submits that the rejections of claims 16, 20-25, and 27 be withdrawn.

Claim 26 is an independent claim that is allowable for similar reasons as discussed with respect to independent claim 15. Therefore, Applicant submits that the rejection of claim 26 be withdrawn.

Claim 28 has been cancelled. Accordingly, Applicants submit that the rejection of claim 28 should be withdrawn.

#### **35 U.S.C. § 103(a) Rejection of Claims 17-19**

The Examiner rejected Claims 17-19 under 35 U.S.C. 103(a) as being obvious over Herz in view of Markel and further in view of U.S. Patent Application Publication No. 2003/0167205 to Maruyama et al. ("Maruyama"). Applicants disagree with this ground of rejection.

#### Claim 17

Claim 17 is allowable for similar reasons to that of claim 15 as claim 17 depends from claim 16, which depends from claim 15. In addition, the Office Action admits that the combination of Herz and Markel does not teach "said device comprises a module for apportioning said points earned into at least two accounts associated respectively with contents." The Office Action contends that Maruyama provides such a teaching by stating that "... Maruyama discloses (¶0077) that the user applies his/her accumulated points to purchase an item A and uses the remaining point to purchase a second item B as represented in Fig. 16." See Office Action, page 10. Even under the Office Action's interpretation of Maruyama, there is no teaching of apportioning the points earned into at least two accounts. That is, the Examiner wrote that "Maruyama discloses that the user applies his/her accumulated points to purchase an item A and uses the remaining point [sic] to purchase a second item B". This purchasing of two items is not the same as "a module for apportioning said points earned into at least two accounts associated respectively with contents" of claim 17. Therefore, Applicants submit that Herz, Markel, and the combination of Herz and Markel do not teach "said device comprises a module for apportioning said points earned into at least two accounts associated respectively with contents." Accordingly, Applicants submit that the rejection of claim 17 should be withdrawn.

#### Claims 18 and 19

As claims 18 and 19 depend from claim 17, Applicants submit that these claims are allowable for the reasons discussed with respect to claim 17. Therefore, Applicant submits that the rejections of claims 18 and 19 be withdrawn.

#### ***New Claim 29***

Claim 29 has been added. Applicants submit that claim 29 is allowable over the cited references for similar reasons as discussed with respect to claim 15 and is patent eligible subject matter.

Having fully addressed the Examiner's rejections, it is believed that this patent application is in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicant's attorney at (609) 734-6809, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Respectfully submitted,  
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